

Message Text

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ACTION STR-07

INFO OCT-01 STRE-00 IO-13 ISO-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00
AID-05 SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02
OMB-01 DOE-15 JUSE-00 AF-10 ARA-10 EA-10 EUR-12
NEA-11 OIC-02 /169 W

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P 031708Z MAY 78

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 9173

INFO AMEMBASSY BRUSSELS

AMEMBASSY TOKYO

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USMTN USEEC

ACTION STR FOR KELLY, GREENWALD, FLAIG

STR PASS CODEL

E.O. 11652

TAGS: ETRD, MTN

SUBJECT: DISPUTE MANAGEMENT - INFORMAL DISCUSSIONS ON
"COMMON APPROACH," APRIL 21-MAY 2, 1978

REF: GENEVA 6020

1. SUMMARY. INFORMAL DISCUSSIONS ON GENERAL APPROACH TO
DISPUTE MANAGEMENT CONTINUED APRIL 21-MAY 2 AMONG
PRINCIPAL DCS AND, FOR FIRST TIME, SEVERAL LDCS. DETAILED
CRITIQUE OF EC AND SWISS DRAFTS ON SUBJECT RESULTED IN
TACIT UNDERSTANDING THAT NEITHER THEY NOR U.S. MTN DEL
DRAFT (NOR EARLIER BRAZILIAN PROPOSAL) DEFINITELY
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ACCEPTED, OR REJECTED, AS EXCLUSIVE WORKING TEXT FOR
FURTHER INFORMAL DISCUSSIONS. RE-DRAFTS OF ALL THREE
DC APPROACHES MAY EMERGE IN COMING WEEKS. END SUMMARY.

2. EC HOSTED INFORMAL SESSION APRIL 24 WITH U.S., JAPAN,
CANADA, NORDICS, SWITZERLAND, AND AUSTRALIA, PLUS MEMBER-
STATE REPS, TO RESUME DISCUSSION ON COMMISSION'S DRAFT

"UNDERSTANDING CONCERNING SETTLEMENT/MANAGEMENT OF DIS-
PUTES." (REFTEL) EC (LUYTEN) CHARACTERIZED DRAFT AS
PRAGMATIC, AIMED AT REINFORCING PROCEDURES WHICH SHOULD
"REMAIN INFORMAL AND FLEXIBLE AND CONSISTENT WITH
CURRENT POLITICAL REALITY." U.S. (MARK) SUPPORTED
GENERAL FORM OF EC DRAFT--I.E., INFORMALITY, BUILDING ON
DESCRIPTION OF EXISTING PRACTICES--AS ONE POSSIBLE
VEHICLE FOR ACHIEVING SATISFACTORY OUTCOME ON DISPUTE
MANAGEMENT, BUT NOTED SEVERAL POINTS THAT WERE IN-
ADEQUATE OR UNACCEPTABLE FROM U.S. VIEWPOINT.
SPECIFICALLY, THESE LATTER CONCERNED (A) GRATUITOUS
REFERENCE TO UNSUITABILITY OF DETAILED "CODIFICATION" IN
IMPROVING DISPUTE-SETTLEMENT PROCEDURES; (B) SOMEWHAT
DISTORTED HISTORICAL REFERENCE TO USE OF PANEL PROCEDURES;
(C) ASSERTION THAT CONCILIATION ROLE OF AN INDEPENDENT
PANEL IS ITS PRIMARY OR EVEN EXCLUSIVE FUNCTION;
(D) NARROW INTERPRETATION OF ART. XXIII FOCUS;
(E) SUGGESTION THAT TERMS OF REFERENCE OF A PANEL
MIGHT BE THE OBJECT/PRODUCT OF NEGOTIATION; AND
(F) INADEQUATE SUPPORT OF WRITTEN PANEL FINDINGS, ETC.
U.S. DRAFTING SUGGESTIONS ON SEVERAL OF ABOVE POINTS
RECEIVED WITHOUT MUCH QUARREL BY LUYTEN, AS WERE U.S.-
PROPOSED ADDITIONS UNDER FINAL "OPEN-ENDED" PARAGRAPH,
I.E., CLEAR DEFINITION OF PANEL'S ROLE; WRITTEN
FINDINGS/RATIONALE AT CONCLUSION OF PANEL INVESTIGATION;
SOME FORM OF TIME LIMIT; AND PROVISION THAT PANELS MAY
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CONSULT WITH AND SEEK INFORMATION FROM ANY SOURCE DEEMED
APPROPRIATE. LUYTEN BALKED, HOWEVER, AT "UNNECESSARY AND
INAPPROPRIATE" U.S. SUGGESTION THAT SOME FORMULA BE
ADDED WHICH WOULD ESTABLISH PRESUMPTION THAT PANEL FIND-
INGS WILL BE ACCEPTED. U.S. ALSO NOTED THAT EC DRAFT
DOES NOT TOUCH ON NOTIFICATION/CONSULTATION/SURVEILLANCE
ELEMENTS OF DISPUTE MANAGEMENT TOPIC AND STRESSED
IMPORTANCE ATTACHED TO THEM IN WASHINGTON. (LUYTEN
AGREED TO FURTHER CONSIDERATION OF THESE OTHER ELEMENTS
IN SUBSEQUENT DISCUSSIONS.)

3. COMMENTS BY OTHER DELS REVEALED JAPAN (UKAWA) AND
NORDICS (LIAN) MOST IN SYMPATHY WITH EC APPROACH, CANADA
(WEEKES) AND SWITZERLAND (EBERHARD) MORE CRITICAL OF ITS
SHORTCOMINGS. ALTHOUGH A MODICUM OF CONSENSUS EMERGED ON
CERTAIN POINTS, SIGNIFICANT DISAGREEMENT REMAINED ON THE
FORMAT AN EVENTUAL AGREEMENT MIGHT TAKE AND THE DEGREE
OF PRECISION NEEDED. U.S. SUGGESTED, AND OTHER PARTICI-
PANTS AGREED, THAT SIMILAR DISCUSSIONS CONTINUE ON MTN
DEL AND SWISS DRAFTS AS WELL AS EC'S IN ORDER TO PERFECT
EACH AS A DISTINCT "MODEL" FOR TREATING DISPUTE-MANAGEMENT
TOPIC, WITH CHOICE TO BE MADE LATER AS TO WHICH APPROACH

(OR WHICH ELEMENTS OF EACH) MOST SUITABLE.

4. SUBSEQUENT SESSION APRIL 27 AT SWISS DEL DEVOTED TO EXAMINATION OF LATTER'S DRAFT, AND WAS ATTENDED BY SAME GROUP OF DCS AS ABOVE LESS JAPAN, PLUS BRAZIL, MEXICO, PAKISTAN, KOREA, AND HONG KONG. (MTN DEL HAD MET INFORMALLY WITH BRAZIL AND MEXICO APRIL 21 TO PROVIDE UP-DATE ON RECENT DISPUTE-MANAGEMENT DISCUSSIONS AND TO GARNER SUPPORT FOR MTN DEL DRAFT AS WORKING BASIS.) ALTHOUGH SOME DCS--PRINCIPALLY EC, JAPAN AND NORDICS--HAD BEEN ACUTELY NERVOUS RE INCLUSION OF LDCS IN INFORMAL DISCUSSIONS, THOSE ATTENDING SWISS SESSION DID NOT RPT NOT PUSH FOR "SPECIAL TREATMENT" IN ANY ASPECT OF DISPUTE SETTLEMENT--EXCEPT FOR UNENTHUSIASTIC AGRUMENTS LIMITED OFFICIAL USE

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BY MEXICO (DELGADO) FOR LDC PANELISTS AND

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ACTION STR-07

INFO OCT-01 STRE-00 IO-13 ISO-00 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00
AID-05 SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02
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TO SECSTATE WASHDC PRIORITY 9174

INFO AMEMBASSY BRUSSELS

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ACTION STR FOR KELLY, GREENWALD, FLAIG

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"COLLECTIVE RETALIATION," WITH NO SUPPORT FROM OTHER LDCS ON EITHER POINT. TOWARDS CLOSE OF MEETING BRAZIL (BARTHEL-ROSA) DELIVERED SUMMARY OF "POINTS OF COVERAGE" WHICH COINCIDED CLOSELY WITH U.S. DESIDERATA; BRAZIL ALSO WILLING TO DROP EXCLUSIVE LDC APPROACH CONTAINED IN BRAZILIAN PROPOSAL (MTN/INF/16). AS FOR SWITZERLAND, EBERHARD CITED "ESSENTIAL ELEMENTS" OF SWISS APPROACH AS TRANSPARENCY, PREDICTABILITY, NO UNDUE DELAYS, AND EMPHASIS ON CONCILIATION; SOME "MINIMAL PRECISION" NEEDED TO ASSURE PREDICTABILITY AND EQUITY; ONLY PROCEDURAL (NOT SUBSTANTIVE) RIGHTS/OBLIGATIONS AT ISSUE. AS IN EC SESSION, U.S. SUPPORTED FURTHER DEVELOPMENT OF SWISS PAPER AS ONE OF SEVERAL POSSIBLE APPROACHES LIMITED OFFICIAL USE

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AND NOTED THAT, WHILE AMOUNT OF DETAIL IN SWISS DRAFT PROBABLY TOO MUCH FOR FINAL AGREEMENT, DISCUSSIONS AT THIS STAGE COULD BENEFIT FROM HAVING NUMEROUS SPECIFIC POINTS SET OUT IN SUCH COHERENT FASHION.

5. PARTICIPANTS AT SWISS MEETING INVITED U.S. TO HOST NEXT INFORMAL SESSION OF SAME DC-LDC GROUP TO DISCUSS MTN DEL DRAFT ON SUBJECT (DUE TO LDCS' UNAVAILABILITY, HOWEVER, MEETING CANNOT BE SCHEDULED BEFORE MID-TO-LATE MAY.)

6. FURTHER DETAILS ON ABOVE SESSIONS WILL BE PROVIDED SUBSEQUENTLY BY MEMCONS.

7. FYI. ANTICIPATED DISCUSSION OF DISPUTE MANAGEMENT MAY 2 IN EXPERIMENTAL "3 PLUS 3 GROUP" (SEPTTEL) INVOLVED ONLY BRIEF PRESENTATION OF REVISED EC PAPER BY LUYTEN AND AGREEMENT TO HAVE MEETING ON SUBJECT EITHER MAY 5 OR 10 INVOLVING U.S., EC, JAPAN, BRAZIL, INDIA, YUGOSLAVIA, AND GATT SECRETARIAT. (COPY OF REVISED EC PAPER WILL BE HAND-CARRIED TO WASHINGTON MAY 4 BY HARTZELL.) TALKS WITH DC DELS INDICATE DESIRE FOR CONTINUED INTRA-DC PLURILATERALS ON THIS SUBJECT DURING NEXT FEW WEEKS, TO CONSIDER REFINEMENTS IN U.S., EC AND SWISS PAPERS AS WELL AS TACTICAL MEANS OF ASSURING CONTINUED LDC "REASONABLENESS" IN SUBSEQUENT DISCUSSIONS. END FYI.

8. DRAFTED BY MARK MCDONALD

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Message Attributes

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